

Opinion No. 59-62

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The Motor Vehicle Sales Finance Act does not apply to road construction equipment such as power shovels and earth moving equipment.

OPINION

{*100} This is written in reply to your recent request for an opinion on the question of whether the Motor Vehicle Sales Finance Act applies to road construction equipment such as power shovels and earth moving equipment.

It is my opinion that the Motor Vehicle Sales Finance Act (Chapter 204, Laws 1959) does not apply to such road construction equipment.

Section 2 A of the Act, which I deem controlling, reads as follows:

"A. 'Motor vehicles' means automobiles, mobile homes, motorcycles, trucks, semi-trailers, truck tractors, and all **vehicles**, new or used, with any power other than muscular power except farm machinery, aircraft or any vehicle which runs only on rails or tracks." (Emphasis supplied)

It seems clear that road construction equipment does not fall within those things enumerated in the first phrase of this section. Construction equipment, as above mentioned is not an automobile, motorcycle, truck, semi-trailer or truck tractor; therefore, the only way that such equipment could be included in the section would be if it were a **vehicle** with any power other than muscular power.

The word "vehicle" has been often construed by the courts of the several states. The New Mexico {*101} Supreme Court has never, however, had occasion to construe the word.

The word has been construed by the Supreme Court of Alabama in **Davis v. Petrinovich**, 112 Ala. 654, 21 So. 344, as:

". . . that which is used as an instrument of conveyance, transportation or communication."

The Supreme Court of Pennsylvania, in **Deardorff v. Continental Life Ins. Co.**, 301 Pa. 179, 151 A. 814, said a vehicle was:

"One in or on which any person or thing may be carried such as a coach, wagon, car or bicycle."

These two expressions of the courts are typical of the construction placed upon the word "vehicle". It will be noted from the above quotations that the courts in construing the word imply that vehicles are things designed primarily for use on a road or highway. This would seem to exclude construction equipment such as power shovels and earth moving equipment in that the primary function of these things is excavation and construction. The Oklahoma Supreme Court in **Keck v. Oklahoma Tax Commission**, 188 Okla. 257, 108 P. 2d 162, when speaking of construction equipment, said:

"The property involved herein is primarily used for excavation and construction work and the inconsequential and incidental use of the highways was not contemplated by the legislature."

It, therefore, appears that road construction equipment such as power shovels and earth moving equipment is not a "vehicle" within the meaning of Section 2 of the Act and the financing of such equipment is not subject to the provisions of the Act.

Boston E. Witt